
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

ERWIN EUGENE SEMIEN,

Plaintiff,

versus

UNITED STATES OF AMERICA,

Defendant.

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CIVIL ACTION NO. 1:18-CV-512

**MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Erwin Eugene Semien, a prisoner confined at the Federal Correctional Institution in Beaumont, Texas, proceeding *pro se* and *in forma pauperis*, filed this civil action pursuant to the Federal Tort Claims Act.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends granting the government's second motion to dismiss for lack of jurisdiction.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit. The court lacks subject matter jurisdiction because plaintiff

failed to exhaust his claim that a prison employee negligently caused his shoulder injury and the individuals responsible for his medical treatment were not government employees.

ORDER

Accordingly, plaintiff's objections (#23) are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge (#21) is **ADOPTED**. The government's second motion to dismiss (#17) is **GRANTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

Signed this date

Dec 18, 2019

A handwritten signature in cursive script, reading "Marcia A. Crone".

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE